

**LEGISLATIVE SERVICES AGENCY
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FISCAL IMPACT STATEMENT

LS 6864

BILL NUMBER: HB 1281

NOTE PREPARED: Feb 9, 2015

BILL AMENDED: Feb 9, 2015

SUBJECT: Local Government Investments.

FIRST AUTHOR: Rep. Soliday

FIRST SPONSOR:

BILL STATUS: 2nd Reading - 1st House

FUNDS AFFECTED: **GENERAL**
 DEDICATED
 FEDERAL

IMPACT: Local

Summary of Legislation: (Amended) This bill has the following provisions:

Deposit of Funds: The bill provides that a political subdivision (other than a township) is not required to deposit funds on the next business day following receipt of the funds if the funds on hand do not exceed \$500. (Under current law, a political subdivision (other than a township) must deposit funds not later than the next business day following the receipt of the funds regardless of the amount.) It increases the current threshold amount for the legislative branch to be required to deposit funds on the next business day from \$100 to \$500.

Separate Fund: The bill provides that if the proceeds from the sale of a capital asset owned by a political subdivision exceed \$50 M, the fiscal body of the political subdivision may do the following:

- (1) Require some or all of the proceeds to be deposited into a separate fund.
- (2) Authorize the proceeds to be invested in the same manner as money in the Next Generation Trust Fund may be invested, and if so invested, all money that is in a deposit account and not in some other form of investment must be deposited in one or more designated depositories of the political subdivision in the same manner as other public funds of the political subdivision are deposited.

It specifies that an expenditure or transfer of any money that is part of the principal of the fund may be made only if the expenditure or transfer is approved by each member of the fiscal body of the political subdivision and by each member of the executive of the political subdivision.

Charitable Nonprofit Foundation: The bill provides that in the case of a county that receives or will receive at least \$50 M from the sale of a capital asset, the county legislative body and the county fiscal body may, by adopting substantially similar ordinances, establish a charitable nonprofit foundation to hold some or all of the proceeds of the sale of the capital asset in trust for the benefit of the county.

It requires the political subdivision and the foundation to enter into an agreement with a registered investment advisor regarding investment of the proceeds and the agreement must be a fee-for-service agreement. The bill also specifies that the board of trustees of the foundation consists of the members of the county legislative body and the members of the county fiscal body.

The bill provides the following if a foundation is established:

- (1) Money must be invested in accordance with the terms of an investment policy statement developed by the board of trustees with the investment advisor.
- (2) The investment policy statement must require diversification, risk management, and other fiduciary requirements common to the management of charitable foundations, including that the funds of the foundation must be invested according to the prudent investor rule. The investment policy statement may not allow the foundation to invest in any investments in which the political subdivision that established the foundation is not permitted to invest under the Constitution of the State of Indiana.
- (3) Money held by the foundation may be invested in any legal, marketable securities, and is not subject to any other investment limitations in the law (other than the limitations contained in the statute authorizing such an investment and the restrictions contained in the investment policy statement).
- (4) The total amount of the funds invested by the foundation in equity securities may not exceed 55% of the total portfolio value.
- (5) The foundation must be audited annually by an independent third party auditor.
- (6) The board of trustees must meet at least quarterly to receive a quarterly compliance and performance update from the investment advisor.
- (7) Three nonvoting advisors who are officers of different county designated depositories shall be appointed by those depositories to attend the quarterly meetings and assist the board of trustees in reviewing the compliance and performance report and the annual audit.

The bill provides that an expenditure or transfer of any money that is part of the principal of the donation may be made only upon unanimous approval of the board of trustees. It provides that to the extent that investment income earned on the principal amount of the donation during a calendar year exceeds 5% of the amount of the principal at the beginning of the calendar year, that excess investment income shall be added to and be considered a part of the principal amount of the donation.

Effective Date: July 1, 2015.

Explanation of State Expenditures: (Revised) *Deposit of Funds:* The bill potentially reduces the number of deposits that the legislative branch would be required to make by increasing the funds-on-hand limit. Any cost savings is expected to be minimal.

Explanation of State Revenues:

Summary of NET Local Impact: The bill provides procedures for investing the proceeds from sales of large capital assets in one of two methods, separating the proceeds into a fund or donating the funds to a charitable nonprofit foundation. The separate fund method applies to all political subdivisions, while the community foundation method applies only to counties.

Both methods provide for more investment options than would otherwise be allowed for local government funds, which potentially would increase investment revenue to the fund, along with increased risk of investments. Interest earned during the year that exceeds 5% of the balance at the start of the year is considered part of the principal under both methods, and expenditures of the principal would require unanimous agreement of the political subdivision's fiscal and executive or the board of trustees.

The political subdivision must contract with a registered investment advisor, there are no restrictions on the advisors' fees. If the political subdivision contracts with an investment manager, fees will be restricted in the separate fund method, which could provide cost savings.

Explanation of Local Expenditures: *Separate Fund:* The bill potentially impacts the payment to an investment manager by prohibiting agreements that set compensation in relation to fund earnings. Cost savings would result if the amount earned by an investment manager under a fee-for-service contract is less than the amount earned under a results-based fee.

Charitable Nonprofit Foundation: A foundation would incur expenses to keep its portfolio balanced, obtain annual audits, and have its board of directors meet quarterly. All of these expenses will be paid from the fund.

Expenditures of Principal: The fund principal could not be spent without unanimous agreement of each member of the fiscal body and the executive in the separated-fund method. For the foundation method, expenditures or transfers from the principal of the fund may not be made without unanimous approval of the board of trustees, which is comprised of the county commissioners and the county fiscal body. In both methods, interest earned during the year that exceeds 5% of the balance at the start of the year is considered part of the principal under the bill.

Explanation of Local Revenues: *Separate Fund:* Money in a fund established under the bill could be invested as the Next Generation Trust Fund (NGTF) may be invested, which potentially increases the interest revenue to the fund and the risk of the investments. Any fiscal impact of the bill will result from investment practices undertaken by the political subdivision, the advice of its investment advisors, and the investments of its investment managers.

Charitable Nonprofit Foundation: The funds in a charitable nonprofit foundation must be invested according to the prudent investor rule, which is found in IC 30-4-3.5. The foundation will have a broader choice of investments than a county would, which increases potential interest earnings of the funds and the risks of the investment. The investment practices undertaken by the foundation and its investment managers will determine the ultimate fiscal impact of the bill.

(Revised) *Deposit of Funds:* The bill increases the funds-on-hand limit from \$100 to \$500 for political subdivisions other than township trustees and cities and towns. When funds received are less than the limit, there is an exception to the requirement that the funds are to be deposited the next business day. When the limit is exceeded, the funds must be deposited the next day. Increasing the limit potentially allows these

entities to reduce the frequency of deposits, which would reduce the related administrative expenses of deposits. However, any cost savings are expected to be minimal.

Additional Information

Investment of the Next Generation Trust Fund. The NGTF may be invested as money is invested by the Indiana Public Retirement System. However, the money may not be invested in equity securities. The prudent investor rule, IC 30-4-3.5, applies. Further, the NGTF trustee may contract with investment management professionals, investment advisors, and legal counsel.

State Agencies Affected: Offices of the legislative branch.

Local Agencies Affected: Political subdivisions.

Information Sources:

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